

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

)
)
DAVID FREEMAN,)
)
Petitioner,)
)
v.)CIVIL ACTION NO.2:06cv122-MHT-VPM
)
RICHARD F. ALLEN, Commissioner)
Alabama Department of Corrections,)
et. al.,)
)
Respondents.)
)

PRETRIAL ORDER

Based on the Joint Report filed by the parties on June 23, 2006 and the scheduling/case management conference on held June 28, 2006 and for good cause, it is hereby ORDERED:

1. That the period for permitted discovery shall conclude on November 3, 2006.
2. That the respondents shall file on or before November 3, 2006¹ a brief which addresses all claims which the respondents contend are procedurally defaulted, explaining the nature of the alleged default .
3. That the petitioner shall file on or before December 1, 2006 a brief which

¹ Because the respondents bear the burden of establishing that a procedural default has occurred, *see Gordon v. Nagle*, 2 F. 3d 385, 388 (11th Cir. 1993), the court concludes it is appropriate that the respondents file the first brief.

a. responds to the procedural default claims raised by respondents and states the petitioner's position on cause and prejudice, including whether a hearing on cause and prejudice is necessary as to any defaulted claim.

b. addresses the merits of ALL claims, including the need for an evidentiary hearing on specific claims.

4. That the respondents shall file on or before December 29, 2006 a brief responding

a. to the procedural default and default hearing issues.

b. to the merit and merit hearing issues raised by the petitioner.

5. That the petitioner shall file on or before January 12, 2007 a brief replying only to the merit and merit hearing issues addressed by the respondent.

6. That this Order and the Joint Report filed June 23, 2006 and incorporated herein by reference shall govern all further proceedings in this matter. Any claim and any procedural default ground not included in this Pretrial Order as referenced in the Joint Report is deemed abandoned and will not be considered by the court absent a compelling showing of cause for counsel's failure to identify the claim or ground.

DONE this 19th day of October, 2006.

/s/ Vanzetta Penn McPherson
UNITED STATES MAGISTRATE JUDGE
VANZETTA PENN MCPHERSON